

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARK A. FAVORS, HOWARD LIEB, LILLIE H.
GALAN, EDWARD A. MULRAINE, WARREN
SHREIBER, and WEYMAN A. CAREY,

Plaintiffs,

DONNA KAYE DRAYTON, EDWIN ELLIS, AIDA
FORREST, GENE A. JOHNSON, JOY WOOLLEY,
SHEILA WRIGHT, LINDA LEE, SHING CHOR
CHUNG, JULIA YANG, JUNG HO HONG, JUAN
RAMOS, NICK CHAVARRIA, GRACIELA HEYMANN,
SANDRA MARTINEZ, EDWIN ROLDAN, and
MANOLIN TIRADO, LINDA ROSE, EVERET MILLS,
ANTHONY HOFFMAN, KIM THOMPSON-WEREKOH,
CARLOTTA BISHOP, CAROL RINZLER, GEORGE
STAMATIADES, JOSEPHINE RODRIGUEZ, and
SCOTT AUSTER,

Intervenor Plaintiffs,

-against-

ANDREW M. CUOMO, as Governor of the State of New
York, ROBERT J. DUFFY, as President of the Senate of
the State of New York, DEAN G. SKELOS, as Majority
Leader and President Pro Tempore of the Senate of the
State of New York, SHELDON SILVER, as Speaker of
the Assembly of the State of New York, JOHN L.
SAMPSON, as Minority Leader of the Senate of the State
of New York, BRIAN M. KOLB, as Minority Leader of
the Assembly of the State of New York, the NEW YORK
STATE LEGISLATIVE TASK FORCE ON
DEMOGRAPHIC RESEARCH AND APPORTIONMENT:
("LATFOR"), JOHN J. McENENY, as Member of
LATFOR, ROBERT OAKS, as Member of LATFOR,
ROMAN HEDGES, as Member of LATFOR, MICHAEL
F. NOZZOLIO, as Member of LATFOR, MARTIN
MALAVÉ DILAN, as Member of LATFOR, and
WELQUIS R. LOPEZ, as Member of LATFOR,

Defendants.
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ORDER OF REFERRAL
TO
MAGISTRATE JUDGE

DOCKET #11-cv-5632
(RR)(GEL)(DLI)(RLM)

**Before: REENA RAGGI, United States Circuit Judge
GERARD E. LYNCH, United States Circuit Judge
DORA L. IRIZARRY, United States District Judge**

PER CURIAM:

By complaint filed November 17, 2011, plaintiffs seek the reapportionment of congressional, State Senate and State Assembly voting districts alleging various violations of the Voting Rights Act, 42 U.S.C. §1973, and the United States and New York Constitutions. A conference with the parties was held before the three-judge court on February 27, 2012. Based upon the parties' oral presentations to the Court and the prior filings made in this case, the Court makes the following findings pertinent to this Order of Referral:

At this time, the task before this Court is the reapportionment of congressional districts only. Whether this Court must intervene to reapportion the State Senate and Assembly districts will be determined by the Court at a later date and will be based on the progress made by the New York State Legislature and Governor in timely preparing new redistricting plans that can withstand the preclearance process required by the Voting Rights Act, 42 U.S.C. § 1973, and otherwise comply with the Constitutions of the United States and the State of New York.

The delineation of new districts must be accomplished in the shortest possible time, as the congressional election petitioning process must begin by March 20, 2012. This difficult and complex process involves dividing the state into districts that reasonably will reconcile the demands of the applicable law, including the Constitution, Voting Rights Act and New York law, and all interested parties, in a fair and impartial manner.

Accordingly, it is hereby ORDERED that:

1. The task of creating a new congressional redistricting plan for the State of New York ("the plan") is hereby referred to the Honorable Roanne L. Mann, U. S. Magistrate Judge of the Eastern District of New York (the "magistrate judge")

who shall be empowered and charged with the duty to prepare a Report and Recommendation to the Court, including a proposed plan for adoption by this Court.

2. In preparing the plan, the magistrate judge must adhere to, and, where possible, reconcile the following guidelines:

a. The plan will divide the state into 27 congressional districts in accordance with the 2010 federal Census and applicable law.

b. Districts shall be substantially equal in population.

c. Districts shall be compact, contiguous, respect political subdivisions, and preserve communities of interest.

d. The plan shall comply with 42 U.S.C. §1973(b) and with all other applicable provisions of the Voting Rights Act.

3. The magistrate judge may consider other factors and proposals submitted by the parties, which, in the magistrate judge's view, are reasonable and comport with the Constitution and applicable federal and state law.

4. The magistrate judge is hereby authorized to retain appropriate technical advisors, consultants, and experts as reasonably may be necessary for her to accomplish her task within the time constraints imposed by this Order. Towards that end, upon having heard from the parties on this issue, Dr. Nathaniel Persily, Charles Keller Beekman Professor of Law and Professor of Political Science at Columbia University School of Law, who is an expert on election law and has assisted in drafting redistricting plans for the states of Georgia, Maryland, New

York and Connecticut, is hereby appointed as an expert to assist the magistrate judge in formulating a plan.

5. The New York State Legislative Task Force on Demographic Research and Reapportionment (“LATFOR”) is respectfully directed to cooperate fully in providing to the magistrate judge, and to any experts, technical advisors, or consultants assisting her, immediate and unrestricted access to information, data, facilities, and technical support, as well as any additional assistance that may facilitate and expedite the work of the magistrate judge.

6. In performing her task, the magistrate judge shall consider any proposals, plans, and comments either already submitted or to be submitted by all parties and intervenors in this action. Additionally, she may invite additional submissions, hold hearings, take testimony, and take whatever steps she deems reasonably necessary to develop the plan contemplated by this Order. The magistrate judge may recommend a new plan or she may incorporate all or parts of extant or newly proposed plans that may be submitted by the parties or interested members of the public.

7. The Magistrate Judge is authorized to determine reasonable rates for the compensation of any experts, technical advisors and consultants she may appoint. All reasonable costs and expenses, including compensation for the experts, technical advisors, and consultants shall be subject to approval by this Court and paid by the State of New York.

The Court is keenly aware of the urgent need to have a plan in place as soon as possible. The number of New York’s members of the House of Representatives in Congress has been

reduced from 29 to 27, based upon the results of the 2010 Census. At the conference held on February 27, 2012, the Court heard from the parties that congressional candidates may only collect petition signatures from persons living within the district they intend to represent. The candidates cannot collect signatures until they know their district lines. The petition process is to begin March 20, 2012, barely three weeks from the date of this Order. Counsel for the New York State Legislature defendants advised the Court that, currently, no congressional district plan exists at all and they do not know when one will be produced. Under the present circumstances, New Yorkers run the risk of having no representation at all in the House of Representatives. “[T]he ‘eleventh hour’ is upon us, if indeed it has not already passed. It is therefore necessary for this Court to prepare for the possibility that this Court will be required to adopt an appropriate redistricting plan.” *Rodriguez v. Pataki*, 207 F. Supp. 2d 123, 125 (S.D.N.Y. 2002).

Accordingly, it is further hereby ORDERED that:

1. The magistrate judge shall submit her Report and Recommendation and proposed plan to this Court by March 12, 2012.
2. Any and all objections to the Report and Recommendation of the magistrate judge are to be filed electronically via ECF no later than noon on March 14, 2012. Hard courtesy copies must be forwarded forthwith to the chambers of the undersigned judges.
3. On March 15, 2012, a hearing on the Report and Recommendation will be held in the Brooklyn Federal Courthouse, 225 Cadman Plaza East. The parties will be advised as to the time to appear and which courtroom to report to by separate order. The parties should be prepared to continue the hearing into the evening hours and the next day, if necessary.

SO ORDERED.

DATED: Brooklyn, New York
February 28, 2012

_____/s/_____
REENA RAGGI
United States Circuit Judge

_____/s/_____
GERARD E. LYNCH
United States Circuit Judge

_____/s/_____
DORA L. IRIZARRY
United States District Judge